IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1490

J. R. LEWIS and HAROLD H. GALLIETT, JR.,
CITIZENS AND TAXPAYERS OF THE STATE OF ALASKA,

Appellants,

v.

STATE OF ALASKA, GOVERNOR JAY HAMMOND,
GUY R. MARTIN, COMMISSIONER OF NATURAL RESOURCES,
MICHAEL C. T. SMITH, DIRECTOR OF DIVISION OF LANDS,

Appellees,

and

COOK INLET REGION, INC.,

Appellee by Intervention.

ON APPEAL FROM
THE SUPREME COURT OF THE STATE OF ALASKA

MOTION OF STATE OF ALASKA, GOVERNOR JAY HAMMOND, GUY R. MARTIN and MICHAEL C. T. SMITH TO DISMISS OR AFFIRM

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Appellees State of Alaska, Governor Jay Hammond, Guy R. Martin, and Michael C. T. Smith ("the State") herewith move this Honorable Court to dismiss the above-captioned appeal of appellants J. R. Lewis and Harold H. Galliett, Jr. as not being within the appellate

jurisdiction of this Court as established by the Constitution and statutes; or alternatively, to affirm the judgment of the Supreme Court of the State of Alaska. Should the jurisdictional statement of appellants be deemed a petition for certiorari, the State respectfully submits that such petition should be denied, for the reasons stated herein.

I.

STATEMENT OF THE CASE

The sole issue upon which this case was decided by the Alaska Supreme Court is whether, under the constitution and laws of the State of Alaska, a state constitutional amendment ratified by the qualified voters of the State is required to enable the State to participate in a three-way exchange of lands among and between it, the United States, and Cook Inlet Region, Inc., ("Cook Inlet"), a native regional corporation created pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), 85 Stat. 688, 43 U.S.C. 1601, *et seq.* No issue was decided questioning the authority of the United States or Cook Inlet to participate in such trade pursuant to relevant federal law.

Pursuant to ANCSA, certain federal lands were required to be withdrawn by the Secretary of the Interior for possible selection by each of the twelve native regional corporations created pursuant to that Act, and in fulfillment of their total entitlement of approximately 44 million acres of public lands granted them by Congress in settlement of their claims of aboriginal title, use and occupancy. The lands originally withdrawn by the Secretary for selection by Cook Inlet tended to place Cook Inlet at a serious disadvantage, since the lands made available to it were more remote and mountainous than

lands withdrawn for selection by other regional corporations. This was due to the fact that the vast majority of lowlands in proximity to Cook Inlet's component villages comprise the most densely settled and developed portion of the State, and had previously been disposed of by the federal government by patent to individuals and to the State of Alaska, thus making them unavailable for selection and conveyance to native corporations at the time ANCSA was enacted. As a result of this inequitable situation, Cook Inlet sought relief in the federal courts, which relief has to date been denied. Cook Inlet's action remains in abeyance in the Court of Appeals for the Ninth Circuit, awaiting the implementation of the land exchange which is the subject of this litigation.[1]

Because Cook Inlet's federal litigation raised serious and substantial questions regarding the validity of land selections previously filed by the State with the federal government under the authority of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. prec. §21 note (1958), and because the security of land title and the stability of land ownership patterns in the most densely settled region of the State were at stake, the State decided to participate in an historic three-way land exchange between it, Cook Inlet, and the United States, pursuant to the direction and authority offered by Section 22(f) of ANCSA, as amended by Public Law 94-204, which states in part,

> [T]he Secretary, the Secretary of Defense the Secretary of Agriculture, and the State of Alaska are authorized to exchange lands or interests therein, including Native selection rights, with the corporations organized by Native groups, Village Corporations, Regional Corporations, and the corporations organized by Natives residing in Juneau, Sitka, Kodiak, and Kenai, all as defined in this Act, and

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[1] *Cook Inlet v. Andrus*, No. 75-2232 (9th Cir.)

other municipalities and corporations or individuals, the State (acting free of the restrictions of section 6(i) of the Alaska Statehood Act), or any Federal agency for the purpose of affecting land consolidations or to facilitate the management or development of the land, or for other public purposes. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged: *Provided,* That when the parties agree to an exchange and the appropriate Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

While complicated in its detail, the general outlines of this exchange, sometimes referred to as the "Cook Inlet land exchange," are relatively straightforward. In return for relinquishment by Cook Inlet of land selections by it and by its component village corporations in remote areas which would ultimately involve high development and service costs, vital fisheries habitat, and other factors militating against private development in the public interest, the State would reconvey to the United States certain lowlands previously patented to it from the United States and located in proximity to the population centers of the Cook Inlet area. These lands, due to their prior patent out of Federal ownership, were not otherwise subject to selection by Cook Inlet under ANCSA.

In return for the relinquishment of selections by Cook Inlet and reconveyance to the United States by the State, the United States, for its part, would make the reconveyed lands available for selection by Cook Inlet, in addition to other suitable Federal holdings not previously withdrawn for selection. In addition, the United States would make available to the State other federal lands for transfer to the State, in an amount comprising approxi-

mately two and one-half times the acreage of the State-patented lands to be reconveyed by the State to the United States under the land exchange. In its reconveyance to the United States, the State would convey all interests previously patented to it by the United States, including the mineral estate; the lands to be made available for State selection from the Federal government would similarly convey the entire land interest, including the mineral estate. Thus the transaction between the State and the United States should be viewed as an exchange of lands between sovereigns, rather than as an outright conveyance of lands by the State of Alaska, as appellants have urged.

To enable the State's participation in this historic land exchange, the Alaska Legislature, after numerous public hearings, committee studies and recommendations from the Joint Federal-State Land Use Planning Commission for Alaska, established under ANCSA, adopted Chapter 19, Session Laws of Alaska 1976, a statute which authorized state participation in the land exchange. Harold H. Galliett, Jr., spokesman for appellants, was afforded every opportunity to present his views regarding the exchange at the administrative and state legislative levels, and he did so with diligence and enthusiasm. However, his personal views regarding the State's participation in the land exchange, including the unsubstantiated valuation figures which appellants offer at pages 9 and 11 of their jurisdictional statement, were neither accepted as factual nor persuasive by the state administration or by the legislature, and Chapter 19, Session Laws of Alaska 1976 was passed into law on March 12, 1976.

By the adoption of Chapter 19, Session Laws of Alaska 1976 the State accepted the offer extended to it by Congress through its previous enactment of Public Law 94-204 on January 2, 1976, to participate in the

proposed exchange. Section 12(a), Public Law 94-204, 43 U.S.C. 1611 note. That section states, with regard to the reconveyance of State-patented land back to the United States in subparagraph (1) thereof,

> * * * The conveyances described in Paragraph (1) of this subsection shall not be subject to the provisions of Section 6(i) of the Alaska Statehood Act (72 Stat. 339).

Section 6(i) of the Alaska Statehood Act states as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsection (a)(b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided,* That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Section 8(b) of the Alaska Statehood Act states in part as follows:

> (b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:
>
> "(1) Shall Alaska immediately be admitted into the Union as a State?
>
> "(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved _____ and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.
>
> "(3) All provisions of the Act of Congress approved _____ reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."
>
> In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

Appellants brought suit in the Superior Court for the State of Alaska on several grounds, including their allegation, central to this appeal, that Section 6(i) of the Alaska Statehood Act, as implemented by Section 8(b) of that same Act, had the effect of amending the Alaska Constitution as a matter of state constitutional law, thus preventing the Alaska legislature from later adopting Chapter 19, Session Laws of Alaska 1976 or any other statute inconsistent with such provision, without first

amending the Alaska Constitution by the procedures set forth therein.[2] The Superior Court for the Third Judicial District at Anchorage issued an order enjoining the State from participating in the proposed land exchange, holding that the exchange was unconstitutional under state law because it consisted of local and special legislation, and because it violated the provisions of Section 6(i) of The Alaska Statehood Act, which the trial court found had become a part of the State Constitution as a matter of state law. The Alaska Supreme Court reversed the ruling of the Superior Court, with three justices voting to reverse on the merits, one of whom dissented on appellants' standing to sue, and two justices dissenting on the merits. *State v. Lewis,* 559 P.2d 630 (Alaska 1977). The majority concluded on the central issue in this appeal as follows:

> We hold that a constitutional amendment is not mandated, and that legislative approval of the Cook Inlet land exchange is sufficient once Congress consented to lifting the restrictions imposed against alienation of mineral rights. * * * 559 P.2d at 642.

The Alaska Supreme Court concluded that the "shall be deemed amended" language of §8(b) of the Alaska Statehood Act did not, as a matter of state law, literally amend the Alaska Constitution, and that Congress was free to remove the restriction on alienation of mineral interests previously imposed upon the State by the Alaska Statehood Act, which Congress had in fact done by adoption of Public Law 94-204, *supra.*

This appeal under the authority of 28 U.S.C. §1257(1) and (2) followed.

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[2]Appellants' Jurisdictional Statement, pp. 15-19.

II.

ARGUMENT ON APPEAL

A. THIS CASE IS NOT WITHIN THE CONSTITUTIONAL JURISDICTION OF THIS COURT

Appellants seek relief in their capacities as citizens and taxpayers of the State of Alaska. It is respectfully submitted that under the circumstances of this case appellants do not have standing to invoke the appellate jurisdiction of this Court.

The standing doctrine is embodied within the concept of justiciability, which reflects the constitutional restriction of federal judicial power to "cases or controversies" within the meaning of Article III of the Constitution. *Schlesinger v. Reservists to Stop the War,* 418 U.S. 208, 215, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974); *Flast v. Cohen,* 392 U.S. 83, 95, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1958). That appellants had standing to pursue their claims in the Alaska courts is irrelevant to the question of whether they possess standing in this Court. *Doremus v. Board of Education,* 342 U.S. 429, 434, 72 S.Ct. 394, 96 L.Ed. 475 (1952). This Court has stated in *Poe v. Ullman,* 367 U.S. 497, 506, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961) (citations omitted): "By exercising their jurisdiction, state courts cannot determine the jurisdiction to be exercised by this Court." It is worthy to note that the Alaska Supreme Court has explicitly eschewed federal precedent with regard to questions of taxpayer standing. *Moore v. State,* 553 P.2d 8, 24 n.5 (Alaska 1976). Furthermore, the doctrine of standing in Alaska has no constitutional basis, but exists solely as a rule of judicial self-restraint. *Moore v. State,* 553 P.2d at 23-24 & n.25. It has been given an increasingly liberal construction by the Alaska Supreme Court. *See, e.g., State v. Lewis,* 559 P.2d 630, 634 (Alaska 1977).

This Court has repeatedly stated that the gist of any inquiry into standing must be whether the party seeking relief has alleged a "personal stake" in the outcome of the controversy so as to guarantee the concrete adversity which is necessary to sharpen the issues presented and render them amenable to judicial resolution. *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962), *quoted in Schlesinger v. Reservists to Stop the War*, 418 U.S. at 217-18, 94 S.Ct. 2925, 41 L.Ed.2d 706; *United States v. Richardson*, 418 U.S. 166, 173 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974); *Flast v. Cohen*, 392 U.S. at 99, 88 S.Ct. 1942, 20 L.Ed.2d 942 (1968). The personal stake required to satisfy the standing requirement and restrictions of Article III is injury-in-fact, i.e., the plaintiff "must allege a distinct and palpable injury to himself." *Warth v. Seldin*, 442 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). *See Schlesinger v. Reservists to Stop the War*, 418 U.S. at 218, 94 S.Ct. 2925, 41 L.Ed.2d 706; *Data Processing Serv. v. Camp*, 397 U.S. 150, 152, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). It is the absence of injury-in-fact which prevents appellants, either as citizens or taxpayers, from attaining standing before this Court.

As state citizens, appellants do not have the personal stake in the outcome of the case which is constitutionally required to invoke the jurisdiction of this Court. Their interest as state citizens in the State's retention of the mineral lands which are the subject of the land exchange is a generalized interest in the financial well-being of the State of Alaska. Appellants do not claim that they personally intend to explore or exploit the lands in question, nor that they might be denied such uses as a result of the exchange. *See United States v. SCRAP*, 412 U.S. 669, 687, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). Their interest as citizens in the procurement of state

revenue from these lands is necessarily undifferentiated and abstract. It therefore lacks the concreteness required to overcome the threshold limitations of Article III. *See Schlesinger v. Reservists to Stop the War*, 418 U.S. at 219-20, 94 S.Ct. 2925, 41 L.Ed.2d 706. This case is clearly within the ruling of *Schlesinger* in which this Court held that citizenship alone is an insufficient ground upon which to base standing to sue. *Schlesinger v. Reservists to Stop the War*, 418 U.S. at 222-23, 94 S.Ct. 2925, 41 L.Ed.2d 706.

Appellants' status as state taxpayers is likewise inadequate to give them standing to bring this case before a federal court. While taxpayer status is capable in certain circumstances of providing plaintiffs with the requisite personal stake, *Flast v. Cohen*, 392 U.S. at 101, 88 S.Ct. 1942, 20 L.Ed.2d 947; *Doremus v. Board of Education*, 342 U.S. at 433-34, 72 S.Ct. 394, 96 L.Ed.475, appellants in the case at bar have not demonstrated that they, *qua* taxpayers, will suffer a direct and concrete injury as a result of the land exchange. Appellants are not in the same position as taxpayers who stand to pay substantial exactments as a result of a particular legislative act. Appellants' concerns are, instead, essentially speculative. Appellants maintain that, should the land be exchanged as planned, the State will stand to lose revenue which it would otherwise recover, and the State's loss of this revenue will affect them adversely. It is not clear at all that the State's receipt of even great sums of money from the leasing of mineral lands in question would affect appellants' individual tax burdens. Even if it did, the effect would probably not be substantial. Furthermore, while the exaction of taxes from an individual taxpayer to advance specific legislative goals may supply the nexus needed to insure standing, the preclusion of an opportunity to supplement the State's

finances with revenue from other sources cannot. Appellants have not challenged the State's taxing power *per se.* They have thus failed to satisfy the test set forth in *Flast,* which requires that there be a nexus between the status of the plaintiff and the type of legislative enactment attacked. *Flast v. Cohen,* 392 U.S. at 102, 88 S.Ct. 1942, 20 L.Ed.2d 947. Finally, appellants have not demonstrated that the land exchange will even affect the State's coffers. That successful mineral exploitation is always a speculative enterprise is no less true in this situation than in any other. It is respectfully submitted that appellants have failed to assert a judicially cognizable interest, and should therefore be denied standing to bring this appeal.

B. THIS APPEAL IS OUTSIDE THE APPELLATE OR "OBLIGATORY" JURISDICTION OF THIS COURT.

This Court's appellate or "obligatory" jurisdiction is determined by 28 U.S.C. 1257, and any appeal from a court of last resort of a state must fall within either of two prescribed categories:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decisions against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

In deciding in favor of appellees and against appellants in this lawsuit, the Alaska Supreme Court has taken no action which would bring appellants within the appellate jurisdiction of this Court as set forth above.

The appellants, as the cornerstone of their argument on appeal to this Court, have attempted to characterize the ruling of the Alaska Supreme Court as a decision against the validity of Section 6(i) of a federal statute, the Alaska Statehood Act. But the Alaska Supreme Court did not reach such a conclusion, and no language is found in that opinion which decides, as a matter of either state or Federal law, against the validity of either Sections 6(i) or 8(b) of the Alaska Statehood Act.

Appellants place their principal reliance in the jurisdiction of this Court upon the fact that Section 8(b) of the Alaska Statehood Act provided that, if three propositions presented to the voters of the Territory of Alaska, subsequent to the drafting and ratification of the Constitution of the proposed State of Alaska, were adopted by the electorate of Alaska,

> "... the proposed constitution of the proposed State of Alaska ... shall be deemed amended accordingly".

Appellants thus argue that, since the propositions were adopted, the Alaska Constitution was thereby specifically amended to include "the terms or conditions of the grants of lands" set forth in Section 6(i) of the Alaska Statehood Act. The Alaska Supreme Court held that, whatever effect the "deemed amended accordingly" language had as a matter of Federal law, as a matter of State law the Alaska Constitution was not in fact amended, though the State of Alaska remained as fully bound by the Federal restrictions upon alienation of

mineral interests in land received under its Statehood Act as if it were a part of the Alaska Constitution, until Congress itself deliberately removed those restrictions on mineral alienation by enactment of Section 12(a) of Public Law 94-204, 43 U.S.C. 1611 note, *supra.*

The Alaska court did not decide against the validity of a Federal statute, a prerequisite to the jurisdiction of this Court under 28 U.S.C. Section 1257, but instead upheld the validity of the Alaska Statehood Act, and particularly Sections 6(i) and 8(b), for so long as the United States itself recognized and maintained the restrictions on mineral alienation which were contained in that Act. Once Congress itself had removed those restrictions, any lingering applicability which the mineral alienation restrictions might have, as a *de facto* amendment engrafted upon the body of the Alaska State Constitution, is a matter of state constitutional law peculiarly within the jurisdiction of the Alaska Supreme Court, and not involving any Federal issue:

> * * * The Alaska Constitution did not contain any specific restrictions on alienation but merely a consent to be bound by such reservations as would be required by Congress. A strong argument may therefore be made that all that was required to release the restrictions was congressional consent. Once this consent was secured, the Alaska Legislature, in agreeing to the disposition of the land and mineral rights, were not violating any specific provision of the Alaska Constitution. * * *
>
> * * * Providing for such restrictions [upon mineral alienation] is left by that document to the determination of Congress and the State. We hold that a Constitutional amendment is not mandated, and that legislative approval of the Cook Inlet land exchange is sufficient once Congress consented to lifting the restrictions imposed against alienation of mineral rights. 559 P.2d at 642.

Appellants thus fail to satisfy the requirement of 28 U.S.C. Section 1257(1) because the Alaska Supreme Court in this action did not decide against the validity of any Federal statute.

Nor has the Alaska Supreme Court in this action upheld a State statute against a claim that it was repugnant to the Constitution or laws of the United States, the second threshold jurisdictional appeal requirement for this Court under 28 U.S.C. Section 1257. While the enactment of Chapter 19, Session Laws of Alaska 1976, in the absence of congressional relief from the requirements of Section 6(i) of the Alaska Statehood Act, would have, if sustained by the Alaska Supreme Court, met the jurisdictional requirement of 28 U.S.C. Section 1257(2), the fact that Congress had previously relieved the State from the burden of Section 6(i) now makes such an argument unsupportable. Simply put, there is no conflict between Chapter 19, Session Laws of Alaska 1976 and any Federal statute, and the Alaska Supreme Court found none.

The Alaska Court in its opinion recognized that, as a matter of Federal law, Congress has no power to unilaterally amend a state's constitution; nor did it find that Congress had attempted to do so by enactment of the Statehood Act. *Coyle v. Smith,* 221 U.S. 559, 55 L.Ed.853 (1911); *Permoli v. Municipality No. 1,* 44 U.S. (3 How.) 589, 11 L.Ed.739 (1845); *Boeing Aircraft Co. v. Reconstruction Finance Corp.,* 171 P.2d 838 (Wash. 1946), *app. dism. sub nom. Boeing Aircraft Co. v. King County, Wash.,* 330 U.S. 803 (1947). Rather, the import of the Alaska Supreme Court's decision was to interpret the Alaska Statehood Act as having full force and effect over the alienation of mineral lands granted to Alaska so long as the United States deemed such restriction

important, and upon the specific exemption by Congress of the Cook Inlet land exchange from such restriction, the Federal law no longer restricted the State's power to trade, by reconveyance, the mineral estate in the lands subject to this three-way exchange.

Indeed, if the Alaska Court had ruled, in accordance with appellants' arguments, that Section 6(i), as implemented by Section 8(b) of the Statehood Act, continued to prohibit the alienation of the mineral estate in such lands, then the Section 1257 jurisdictional test might have been satisfied: the Alaska Court would have ruled that, notwithstanding the specific exemption from Section 6(i) granted the State by Congress in Section 12(a) of Public Law 94-204, 43 U.S.C. 1611 note, such exemption was ineffective as a matter of Federal law. The Alaska Court did not reach this result, which would have been in direct conflict with Federal law, but instead reached the opposite result, upholding the validity and intent of the Statehood Act, the Alaska Native Claims Settlement Act, and Public Law 94-204.

III.

IF APPELLANTS' JURISDICTIONAL STATEMENT MAY BE CONSIDERED AS A PETITION FOR A WRIT OF CERTIORARI, THE PETITION SHOULD BE DENIED

A. CERTIORARI SHOULD BE DENIED BECAUSE THE DECISION OF THE ALASKA SUPREME COURT IS CORRECT

The Alaska Supreme Court in its extensive opinion analyzed the factual and philosophical origins of the natural resources provisions of the Alaska Constitution, and the relationship, both in time sequence and in fact, to Sections 6(i) and 8(b) of the Alaska Statehood Act.

That analysis, which concluded that the Alaska Constitution had not in fact been amended as a matter of State constitutional law, by the people or by the Legislature pursuant to the "deemed amended accordingly" language of Section 8(b) of the Alaska Statehood Act, is correct and should not be disturbed. 559 P.2d at 636-642.

Appellants further argue under the "compact" theory that Congress, once having enacted Sections 6(i) and 8(b) of the Statehood Act, was later incapacitated from removing such restrictions on alienation by the specific exemption granted the Cook Inlet land exchange by Public Law 94-204. The Alaska Court held that the existence and strength of such a compact, once the Federal restriction on alienation had been lifted, was the subject of state constitutional interpretation, and did not limit the authority of Congress to lift a previously-imposed burden from the State. Certainly Congress has the power to unilaterally modify a contractual relationship by abandoning a right previously secured to it, or by waiving a condition previously imposed for its benefit, thus increasing a state's land rights and giving to that state greater local political autonomy and control. Congress has done so with respect to Alaska on at least five prior occasions, none of which required the consent of the State or an amendment to the state's constitution pursuant to the "compact" theory which appellants urge.[3] In fact no state consent, by legislative enactment

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[3]P.L. 86-70 (73 Stat. 141) (Alaska Omnibus Act); P.L. 86-173 (73 Stat. 395) (improved rights to select lands under mineral lease); P.L. 86-786 (74 Stat. 1025) (same); P.L. 88-135 (77 Stat. 223) (reduced minimum acreage requirement for community grant selections from 5,760 acres to 160 acres); P.L. 88-389 (78 Stat. 169) (extended Section 6(g) selection period from five to ten years).

or constitutional amendment, was deemed necessary in these instances.

While the waiver of the application of Section 6(i) to the Cook Inlet land exchange expressly required state consent in Public Law 94-204, that statute did not specify the forum in which that consent was to be given, and the Alaska Court has ruled that formal legislative and executive action, and not a constitutional amendment, were legally sufficient. Because no federal or state obligations under the original compact were impaired, congressional action in removing the restriction on alienation cannot be claimed to represent a breach of any sacred compact between the State and the United States.

Furthermore, the amended Section 22(f) of ANCSA itself recognized the need for negotiation of land exchanges among and between the United States, the various native regional corporations and the State of Alaska. The inability of the State to transfer its entire land interest, including the mineral estate, pursuant to that exchange authority would largely negate the ability of the State to participate in this broad-based authority for comprehensive land consolidation and management through this exchange process authorized by Federal law. The exchange authority originally granted in Section 22(f) of ANCSA was broadened by section 17 of Public Law 94-204, 43 U.S.C. 1621 to authorize exchanges directly between native corporations and the State, without the need for the United States as an intermediary. Where, as in the present Cook Inlet land exchange, the State as a part of the exchange agreement is required to reconvey lands, including the mineral interest previously granted from the United States, back to the United States, the full breadth of the ANCSA exchange authority is not put into play, and such an exchange, directly between sovereign governments, stands

on a much less suspect footing than might an exchange between the State and a private corporation. In fact, the results of a valid reconveyance of the entire land interest from the State to the United States, or an attempted conveyance in violation of Section 6(i) as appellants urge, would be identical: the United States would ultimately own both the surface and mineral estates, either through legal reconveyance to which the Alaska Supreme Court has given its sanction, or through a forfeiture procedure instituted by the Attorney General against the State, which appellants urge is a risk the State faces if it attempts to convey the mineral interest in alleged violation of Section 6(i). In either event, through reconveyance or through forfeiture, the United States will own the entire land estate. Thus it is obvious that, whatever effect Section 6(i) might have with respect to conveyances from the State to other entities, it has no conceivable application to a reconveyance to the United States.

B. NON-FEDERAL GROUNDS EXISTS ADEQUATE TO SUSTAIN THE DECISION OF THE ALASKA COURT

Even if this Court were to find that the Alaska Supreme Court either directly or by necessary implication found against the validity of the "deemed amended accordingly" provision of Section 8(b) of the Alaska Statehood Act, there exist adequate and independent non-federal grounds upon which that court's decision may be sustained. The ruling below was framed entirely in terms of the procedures necessary to amend the Constitution of the State of Alaska, and the decision held that, whatever action may have been taken by the United States in the Statehood Act, neither the people nor the Legislature of the State have undertaken to perfect or implement a constitutional amendment, in accordance

with procedures prescribed by the State's constitution and laws, subsequent to enactment by Congress of the Alaska Statehood Act. The scope, content and procedures for amending a state's constitution are peculiarly within the scope of review of a state's supreme court, and the present decision may be entirely sustained on that basis, without reference to a Federal requirement which, while once imposed as a matter of Federal law, was subsequently lifted by specific congressional enactment. *Coyle v. Smith, supra; Permoli v. Municipality No. 1, supra; Boeing Aircraft Co. v. Reconstruction Finance Corp., supra; National League of Cities v. Usery,* __ U.S. __ , 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976).

C. NO SUBSTANTIAL FEDERAL QUESTION EXISTS

Rule 15 of the Supreme Court Rules requires that appellants' jurisdictional statement present grounds upon which it may be contended that any Federal questions involved are substantial. Appellees have asserted in this memorandum that in fact no Federal questions are raised as a result of the decision of the Alaska Supreme Court. The only conceivable claim that a substantial Federal question exists would have occurred had the Alaska Supreme Court issued its decision without Congress having first specifically exempted the Cook Inlet land exchange from provisions of Section 6(i) of the Alaska Statehood Act through its enactment of Section 12(b) of Public Law 94-204, 43 U.S.C. Section 1611 note. Had that been the case, then an attempt by the Alaska court to allow alienation of the mineral estate might have been subject to challenge on the basis that, whatever the status of the State's Constitution on that point, Congress itself had not consented to waiver of the restriction, thus drawing directly into question the power of the State to act contrary to a Federal act. Since Congress did in fact

exempt this land exchange from that provision prior to action by the Alaska Legislature and the decision of the Alaska Supreme Court, no substantial federal question exists in this case.

VI.

CONCLUSION

The Cook Inlet land trade is a painstaking, comprehensive solution to problems of land tenure and land management which have existed in the Cook Inlet region of Alaska for many years, and which promise, if not adequately dealt with now, to plague the State and Federal Governments for many years to come, as well as to thwart the intent of Congress with respect to the entitlement of Cook Inlet Region, Inc. from the Alaska Native Claims Settlement Act. It is without doubt one of the largest, most coherently constructed, and most carefully scrutinized land exchanges in the history of the nation. It involves benefits and compromises for all parties. It was arrived at through negotiations which extended more than one year, and its implementation, which now has been considerably delayed, will require several more years even under the most optimistic schedule.

Authorization for the land exchange has involved the boards of several corporations, and the administration, the legislature and the judiciary of the State of Alaska, as well as the full attention of the United States Congress and the President of the United States. Now this matter rests before this Honorable Court. Appellants have been afforded every opportunity to present their legal and factual views regarding the advisability of this land exchange at every step in the progress of this comprehensive program from an idea to reality. While their views

have been respectfully considered and weighed, the collective wisdom of the administrative and legislative bodies at both the State and Federal levels have determined them to be without factual merit, and the Alaska Supreme Court has found them to be without legal merit. The State urges that appellants' jurisdictional statement be dismissed for want of a substantial Federal question, or, in the alternative, that the decision of the Supreme Court for the State of Alaska be affirmed. If appellants' jurisdictional statement is treated as a petition for certiorari, the State urges that such petition be denied.

Respectfully submitted,

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